

C. REMARKS

The interview with the Examiner and Primary Examiner is noted with appreciation. The substance of the interview will be incorporated into the response to the rejection of record.

All of the claims stand rejected under 35 USC 103 over Dobbie in view of Milner or Treutner.

As set forth during the interview, the prior art as a whole would not lead one skilled in the art to reasonably expect that the claimed material could be successfully employed for reducing post operative adhesions as claimed.

As indicated during the interview, there were many wishful suggestions in the prior art with respect to reducing the incidence of post-operative adhesions; however, in general such suggestions resulted in failure, except for the claimed subject matter.

For example, Treutner (p. 770, first column) suggested that antibiotics and fibrinolytic agents could be used to reduce post-operative adhesions and even provided animal data that would suggest that such agents would be successful.

However, as indicated during the interview, the 2007 Review Article from Gynecol Surg. 4:243-253 (included as Tab 7 to the Declaration of Andrew Barrett filed on 29 September 2008) discloses (p. 244, Col. 2. under the heading "Pharmacological agents) that antibiotics and fibrinolytics did not reduce adhesions and, in fact, no pharmacological agents had such an effect. Thus, the suggestion made by Treutner (including animal data) as to antibiotics and fibrionolytics was shown to be incorrect.

The Review Article (p. 247, under the heading "Broad-coverage fluid agents") discloses that liquid agents (except for the Icodextrin solution sold under the mark Adept ® have not been successfully used for reduction of adhesions. The Adept ® product that is commercially sold for reducing surgical adhesions is a dextrin product in accordance with the defined invention; see Par. 4 of the Declaration of Andrew Barrett of September 29, 2008, and note the Example of the present application which used Icodextrin.

The Review Article (p. 247, under the heading Adept ®) then states that the agent used in the claimed invention (a fluid agent) for reduction of post-operative adhesions is the only approved and available adhesion reduction solution.

The prior art applied in the rejection must be considered against the background of numerous suggestions as to how to reduce surgical adhesions and numerous failures in this respect.

Dobbie discloses that peritoneal dialysis fluids, of which Icodextrin is one example, might be used to reduce the occurrence of adhesions in continuous ambulatory peritoneal dialysis (CAPD). However, Dobbie unequivocally states that such a result was achieved "as long as continuous ambulatory peritoneal dialysis (CAPD) is maintained."

One skilled in the art would readily understand that for post-operative reduction of adhesions, there would be no continuous dialysis, whereby one of the basic requirements of Dobbie for successful avoidance of adhesions would not be present.

Dobbie indicates that Icodextrin may possibly have a post-operative use in an attempt to avoid adhesions.

In this respect, however, Dobbie is no different than others in the art, including Treutner, who suggested trying a wide variety of agents and materials in an attempt to reduce post-operative adhesions. There is no information within Dobbie that would lead one skilled in the art to reasonably expect that Dobbie's suggestion would be successful in that there was a plethora of unsuccessful suggestions in the art (for example Treutner, and the broad based fluid agents disclosed in the Review Article).

Moreover, there was a teaching in Dobbie that would lead one skilled in the art to question the likelihood of success; namely, Dobbie's observation that the Icodextrin was effective for reducing the occurrence of adhesions when dialysis was maintained (a procedure not relevant to post-operative reduction of adhesions).

Post operative adhesions were known to be a major problem and there have been many suggested approaches to reducing such adhesions. Such possible treatments included pharmacological agents such as antibiotics and fibrinolytics (Treutner) all of which were not successful. Such possible treatments also included fluid agents, which also failed, except for the use of dextrin polymers as claimed. Thus, the prior art as a whole would not have reasonably predicted that the claimed dextrin could be successfully used in the claimed process for reducing the incidence of post-operative adhesions merely because Dobbie observed reduction in CAPD adhesions. In the absence of a reasonable expectation of success, Dobbie does not render obvious the claimed subject matter, e.g. KSR Int'l. Co. v. Teleflex 82 USPQ 2d 1385 (2007).

The secondary references do not remedy the deficiencies of Dobbie. Treutner does not provide any expectation that Icodextrin could be successfully use to reduce post-operative adhesions. Moreover, the fact that the approaches suggest by Treutner eventually failed provides strong evidence that an expression of a possible use, such as made by Dobbie does not provide a reasonable likelihood that such a possible use would be successful. In fact, Dobbie would lead one skilled in the art away from an expectation of success in that Dobbie discloses that CAPD adhesions are reduced only if continuous dialysis is maintained, which would not be possible in an attempt to reduce post-operative adhesions.

In regard to Milner, as previously noted, Milner does not disclose post-operative treatment.

At the interview, the Examiner and Primary Examiner understood that the art as a whole, including Treutner, had suggested a wide variety of materials and in general such suggestions had led to failure rather than success. The Examiner and Primary Examiner further understood that the Dobbie reference needed to be considered in the light of prior art suggestions that eventually failed when assessing whether Dobbie provided a reasonable expectation of success by an unsupported statement that Icodextrin may have a possible post-operative use, particularly where Dobbie also disclosed that continuous dialysis was required in order to avoid CAPD-related adhesions.

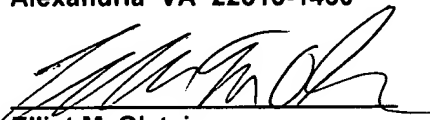
Although no agreement was reached, the Primary Examiner and Examiner recognized the relevancy of such arguments and requested that they be incorporated into a written response.

Reconsideration and withdrawal of the rejection are requested.

FIRST CLASS CERTIFICATE

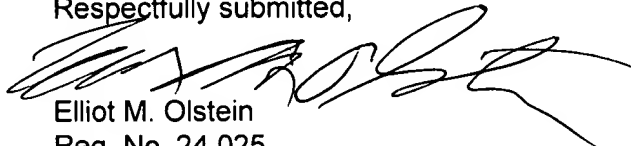
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Respectfully submitted,



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